

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Samuel Ross	Team: Squad #7	CCRB Case #: 201804989	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 06/22/2018 1:00 AM	Location of Incident: [REDACTED]	Precinct: 77	18 Mo. SOL 12/22/2019	EO SOL 12/22/2019	
Date/Time CV Reported Fri, 06/22/2018 9:51 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 06/22/2018 9:51 AM		
Complainant/Victim	Type	Home Address			
[REDACTED]	[REDACTED]	[REDACTED]			
Witness(es)	Home Address				
[REDACTED]	[REDACTED]				
Subject Officer(s)	Shield	TaxID	Command		
1. POM Steven Rupnick	27055	955426	077 PCT		
2. POM Craig Mcgrath	26900	955165	077 PCT		
Witness Officer(s)	Shield No	Tax No	Cmd Name		
1. SGT Kevin Mccarthy	03347	949290	077 PCT		
Officer(s)	Allegation	Investigator Recommendation			
A.POM Steven Rupnick	Abuse: Police Officer Steven Rupnick frisked § 87(2)(b) [REDACTED]	[REDACTED]			
B.POM Steven Rupnick	Abuse: Police Officer Steven Rupnick searched § 87(2)(b) [REDACTED]	[REDACTED]			
C.POM Craig Mcgrath	Abuse: Police Officer Craig McGrath threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]			

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via telephone on June 22, 2018.

On June 22, 2018, at approximately 1:00 AM, outside of § 87(2)(b) in Brooklyn, Sgt. Kevin McCarthy, PO Steven Rupnick, and PO Craig McGrath of the 77th Precinct approached § 87(2)(b) for allegedly smoking a marijuana cigarette. Standing with § 87(2)(b) was § 87(2)(b). PO Rupnick issued § 87(2)(b) a summons for possession of marijuana. During this encounter, PO Rupnick allegedly frisked § 87(2)(b)'s backpack (**Allegation A: Abuse of Authority, § 87(2)(g)**) and reached into § 87(2)(b)'s pants pocket (**Allegation B: Abuse of Authority, § 87(2)(g)**). PO McGrath also threatened to arrest § 87(2)(b) (**Allegation C: Abuse of Authority, § 87(2)(g)**). After PO Rupnick issued a summons to § 87(2)(b) the officers departed. § 87(2)(b) was not arrested.

§ 87(2)(b) provided to the investigation a smartphone video capturing his interactions with the officers (Board Review 01; 9 minutes 26 seconds).

Attorneys were consulted with regard to Allegations A and B.

Findings and Recommendations

Allegation A—Abuse of Authority: Police Officer Steven Rupnick frisked § 87(2)(b)

§ 87(2)(b) (Board Review 02) stated that he was carrying a backpack at the time of the incident. Within the backpack were his wallet, keys, an extra work shirt, cologne, and his New York State benefits identification card, among other items. After the officers approached, and after PO Rupnick asked § 87(2)(b) for identification, PO Rupnick squeezed his backpack.

§ 87(2)(b) (Board Review 03) stated that, with the officers' permission, § 87(2)(b) opened his backpack in order to retrieve state-issued identification. However, PO Rupnick then began to search the interior of § 87(2)(b)'s backpack. § 87(2)(b) did not testify that PO Rupnick squeezed the exterior of § 87(2)(b)'s backpack.

Note that § 87(2)(b) did not allege that any officer searched the interior of his backpack.

PO Rupnick (Board Review 04) did not recall if § 87(2)(b) carried a backpack and did recall if he ever patted down a backpack during this interaction. PO McGrath (Board Review 05) recalled § 87(2)(b) carrying a backpack but denied that PO Rupnick ever patted down the backpack. Both officers denied making any observation which led them to believe that § 87(2)(b) might be armed.

As noted above, § 87(2)(b) recorded his interactions with the officers with a smartphone (Board Review 01). At no time did the video capture an officer squeezing § 87(2)(b)'s backpack, or anyone making any remark indicating that any officer squeezed the backpack. However, the camera was moving throughout the interaction, and so might not have captured PO Rupnick squeezing the backpack if he did so.

§ 87(2)(g)

Allegation B—Abuse of Authority: Police Officer Steven Rupnick searched § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) stated that they were standing outside of 1008 St. Marks Avenue speaking with one another when the officers approached. § 87(2)(b) denied that he was using marijuana at the time of the incident. Both he and § 87(2)(b) stated that the area did not smell of marijuana. They stated that when the officers approached, PO Rupnick shone his flashlight downward into § 87(2)(b)'s pants pockets. According to § 87(2)(b) the sweatpants were loose-fitting and had wide pockets, but according to § 87(2)(b) it would not have been possible to see down into the pockets. § 87(2)(b) and § 87(2)(b) both stated that § 87(2)(b) was recording the interaction with a smartphone, and PO Rupnick asserted that § 87(2)(b) was doing so because he was carrying marijuana in his pocket. § 87(2)(b) denied carrying marijuana and then stated that even if he were carrying marijuana, PO Rupnick was not allowed to enter his pockets. PO Rupnick replied that he saw marijuana in § 87(2)(b)'s pocket and so was allowed to enter the pocket. PO Rupnick reached into § 87(2)(b)'s right front pants pocket and then threw what resembled a hand-rolled cigarette onto the ground. § 87(2)(b) denied having carried this item in his pocket and § 87(2)(b) stated that he had not previously seen this item.

PO Rupnick and PO McGrath stated that from inside of their vehicle, they saw § 87(2)(b) smoking a lit cigarette. They were 10-15 feet away and detected the odor of marijuana. No one else was in the area. They then exited the vehicle and approached § 87(2)(b) confirming that the odor of marijuana was emanating from his cigarette, which they believed to be a marijuana cigarette. PO Rupnick stated that he intended to issue § 87(2)(b) a summons. When the officers approached, § 87(2)(b) placed the lit marijuana cigarette into his front right pants pocket, but he did not place it in the bottom of the pocket. Rather, he placed it at the bottom of the pocket's opening, so that it partially protruded from the pocket and remained visible to the officers. PO Rupnick took the marijuana cigarette from the opening of § 87(2)(b)'s pocket and, according to PO Rupnick, dropped it on the floor. PO McGrath stated that PO Rupnick never reached down into § 87(2)(b)'s pocket. However, PO Rupnick acknowledged doing so. He stated that after he removed the marijuana cigarette from the opening to § 87(2)(b)'s pocket, he reached down into § 87(2)(b)'s pocket in order to ensure that there was no more marijuana within.

Ultimately, PO Rupnick issued § 87(2)(b) a summons for § 87(2)(b) (Board Review 06) and later prepared an evidence voucher for the marijuana cigarette (Board Review 07).

As noted, § 87(2)(b) recorded video of his interactions with the officers. A portion of this video captured PO Rupnick reaching into § 87(2)(b)'s pocket:



201804989_20181217_1557_DM.mp4

Video Clip #1 (41 seconds)

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Video Clip #1 shows PO Rupnick (who wears a t-shirt reading “Seven Seven”) asking § 87(2)(b) if he is recording video because he is carrying marijuana in his pocket. § 87(2)(b) replies that PO Rupnick is not allowed to enter his pocket, to which PO Rupnick replies that he has not done so. PO Rupnick then says, “Now that I see it, I can go in your pocket.” § 87(2)(b) asks if this constitutes probable cause for PO Rupnick to enter his pocket, and PO Rupnick responds “Absolutely.” The video then shows PO Rupnick reaching into § 87(2)(b)'s pants pocket. As PO Rupnick pulls the pocket open, he says, “To get your little blunt right there.” The video does not show the marijuana cigarette or its location during this portion of the interaction.

According to People v. Reid 24 N.Y.3d 615 (2014), independent of whether or not an officer has a legal basis on which to arrest an individual, the search of said individual is not justified as “incident to lawful arrest” if the officer does not actually intend to make an arrest at the time of the search (Board Review 09). Therefore, although the officers stated that they observed § 87(2)(b) smoking a marijuana cigarette in public – a misdemeanor (see New York State Penal Law 221.10; Board Review 10) – because PO Rupnick did not intend to arrest § 87(2)(b) and indeed did not arrest him, this search was not justified as having been incident to lawful arrest.

However, according to People v. Arroyo 188 A.D.2d 655 (1992), contraband coming into the plain view of an officer who has the right to be in the position to have that view is subject to seizure (Board Review 11).

It is undisputed that the officers approached § 87(2)(b) in a public space § 87(2)(g).
§ 87(2)(g)
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According to People v. De Bour 40 N.Y.2d 210 (1976), an officer must have probable cause in order to search an individual (Board Review 12). § 87(2)(g)
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§ 87(2)(g)

Allegation C—Abuse of Authority: Police Officer Craig McGrath threatened to arrest

§ 87(2)(b)

As noted, § 87(2)(b) denied smoking marijuana and stated that the area did not smell of marijuana. However, he acknowledged carrying “organic hemp” rolling papers. According to § 87(2)(b) he told the officers that he was not in possession of marijuana, but also that because possession of marijuana had recently been downgraded to summonsable offense, the officers could not arrest him even if he were. The officers told § 87(2)(b) that he was wrong and that they could place him in handcuffs. § 87(2)(b) argued that the officers could not arrest him and reiterated that they could only issue a summons. PO McGrath, however, replied that § 87(2)(b) “did not qualify” for a summons and that marijuana was still illegal in New York State.

§ 87(2)(b) also denied the presence of the odor of marijuana and stated that when PO Rupnick threw a rolled-up, white paper to the ground, this was the first time he saw the object. § 87(2)(b) also stated that PO McGrath told § 87(2)(b) that he could be arrested for what PO Rupnick had found on his person.

As noted above, both PO McGrath and PO Rupnick stated that they observed § 87(2)(b) smoking a marijuana cigarette in public. PO McGrath stated that § 87(2)(b) could have been arrested for this offense. He told § 87(2)(b) that he had committed a penal law misdemeanor and could be arrested, but that the officers were exercising discretion by issuing him a summons. PO McGrath also explained that if § 87(2)(b) behaved in an uncooperative manner, he could be issued a summons at the officers’ stationhouse or arrested.

§ 87(2)(b) s smartphone video captured relevant portions of his interactions with the officers:



Video Clip #2.mp4

Video Clip #2 (1 minute 1 second)
Board Review 13; Original video linked to IA #10

Video Clip #2 shows PO Rupnick asking § 87(2)(b) to “zoom in on the weed on the ground,” to which § 87(2)(b) replies, “We’re not going to do that.” Between the 12 second mark and the 18 second mark, an object resembling a partially burnt hand-rolled cigarette is visible on the ground between § 87(2)(b) and the officers. When § 87(2)(b) states that an officer might

have placed the marijuana cigarette in his pocket, PO McGrath says, “If you want to play this game we can put you in handcuffs.” § 87(2)(b) asks, “For a joint?” Both PO Rupnick and PO McGrath tell § 87(2)(b) that marijuana is still illegal. PO McGrath says, “Lit burning marijuana in public view is...” but does not finish the statement. § 87(2)(b) counters, “Did you see me smoking marijuana?” No officer responds to this question. Finally, § 87(2)(b) concedes that marijuana is illegal.



Video Clip #3.mp4

Video Clip #3 (59 seconds)

Board Review 14; Original video linked to IA #10

Video Clip #3 captures PO McGrath saying to § 87(2)(b) “The law states right now I can lock you up...I’m allowed to.” He then tells § 87(2)(b) that his offense is “not a ticket; it’s an arrest.” When § 87(2)(b) says to PO McGrath, “Don’t hop out and violate...” PO McGrath says, “You know what?” and reaches toward the right side of his waist. However, an officer tells PO McGrath to “chill,” and when PO McGrath says that the officers can “ninety-six him from the base” (issue him a summons from their command), an officer responds, “We’ll do it from here.”

PO McGrath reviewed the interaction captured in Video Clip #3 during his CCRB interview. He confirmed that he reached for his handcuffs with the intent to place § 87(2)(b) under arrest for smoking marijuana in public. However, he ultimately did not handcuff or arrest § 87(2)(b).

According to New York State Penal Law 221.10, a person is guilty of criminal possession of marijuana, a misdemeanor, when he or she knowingly and unlawfully possesses marijuana in a public place and such marijuana is burning or open to public view (Board Review 12).

§ 87(2)(g)
[Redacted text block]

Civilian and Officer CCRB Histories

- § 87(2)(b) [Redacted text block]

- § 87(2)(b)
- PO Rupnick has been a member of the NYPD for five years and has been a subject in three other cases with eleven allegations, none of which have been substantiated (Board Review 16). § 87(2)(g)
 - As of the writing of this report, Case #201807690 is pending investigation.
- PO McGrath has been a member of the NYPD for five years and has been a subject in seven other cases with seventeen allegations, none of which were substantiated (Board Review 17).
 - In Cases #2018201607777 and #201708090 it was alleged that PO McGrath threatened to arrest individuals. The former allegation was truncated and the latter allegation was unsubstantiated.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of September 24, 2018 the New York City Office of the Comptroller had no record of a Notice of Claim being filed in regard to this complaint (Board Review 18).
- § 87(2)(b)

Squad No.: _____

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date